

1905-023 Chancery Causes: C. W. Ewing to vs. M. E. C. Ewing to
Lee Co.

CA-Estate Dispute
T-Property

-Deed

To the Honorsble H.A.W.Skeen, Judge of the Circuit

Court of Lee County, Virginia:

Humbly complaining, your orators C.W.Ewing and F.C.Ewing, would respectfully show unto your Honor that Joseph H.Ewing who lately departed this life in this County was sized before his death of a valuable tract of land situated in said County on the main Cumberland Gap road some five miles west of the town of Jonesville; that for some time before his death the said Ewing was in feeble health and that in order to make provision for his wife and children, a short time before ~~his~~ his death he conveyed to his wife, Mary E.C.Ewing, all the lands then owned by him, situated in said County. Said deed recites a consideration of \$2240.00, but the true consideration, as respondents are informed, was the desire to provide for his wife and children, and to carry this out his said wife was to convey said lands to their three youngest children, to-wit: your orators, C.W. and F.C.Ewing and their sister Mary S.Ewing, the oldest, E.W.R.Ewing having been theretofore fully provided for. This latter consideration or agreement, the said Mary E.C.Ewing afterwards, in point of date of deed, but really on the same day in point of execution and acknowledgment, attempted to consummate, but in said attempted consumation she, either by mistake or purposly, so executed said deed as to cut out entirely your orator C.W.Ewing, and conveyed the same to his children instead of him, Your orators believe that this is a mistake on the part of their mother, the grantor in said deed. She had no reason whatever, known to your orators, valid or otherwise, for preferring C.W.Ewing's children instead of him as to his part of said land, but the effects of said mistake are more far-reaching than that, if the conveyance should vest in all the children of C.W.Ewing, either then in being or that might thereafter be begotten, because then the effects of the deed would be to vest each one of these children with a share equal to that of her own children, F.C. and Mary S.Ewing. A copy of each of said deeds in herewith filed marked "A" and "B".

It will be noticed from an inspection of the last named deed that the conveyance is to F.C. Ewing, Mary S.Ewing and C.W.Ewing's children, without naming or numbering them, and certainly said grantor never in-

tended that the said C.W.Ewing's children should each, though there were a dozen of them, stand as to said land upon the same footing, each taking a like interest, with her own children. By a further inspection of said deed it will be seen that the said grantor reserves a life estate to herself of one-third of said land. This reservation is in accordance with the desire of her said husband to provide for his wife and children. Your orators are of opinion and they aver it to be true that the purpose of the said M.E.C.Ewing, in making said conveyance, was to convey said land to her three children Mary S., F.C. and C.W Ewing in accordance with the agreed understanding between herself and her said husband at the time he made said conveyance to her, and that in the use of the word children, inserted by herself with a pen, she intended to say that said three parties to whom she was conveying were her children and that by mistake she inserted said word at the wrong place.

Your orators will further show your honor that said deed was never seen by them until after it had been recorded in the Clerk's office of this County, nor do they believe it was seen by their sister Mary S.Ewing until after it had been so recorded as aforesaid.

Now the object of this bill is, first, to have said deed corrected and the ~~deed~~ made in accordance with the intention and purpose of Joseph H.Ewing at the time he conveyed said land to his wife, and in accordance with the evident purpose of the said Mary E.C.Ewing at the time she made said deed, and thereby to correct the mistake made by her in said conveyance, and secondly, to have said land partitioned among those entitled thereto in accordance with their respective interests.

And being without adequate remedy at law they pray your Honor's Court of chancery to take cognizance of their cause and grant them proper relief. To this end they make Mary E.C.Ewing, Mary S.Ewing, Irma Lucile Ewing and Raymond R.Ewing, the last two of whom are infants and the children of C.W.Ewing, defendants to this bill, and they pray that each of the adults be required to answer the same, but not under oath, as an answer under oath is expressly waived; that a guardian ad litem be appointed to answer for and defend the rights of said infants; that upon a final hearing, said deed of the said M.E.C.Ewing

aforesaid be reformed, by striking therefrom the word children; that said conveyance be perfected in Mary S.Ewing, F.C.Ewing and C.W.Ewing according to the true intent of the said Joseph H.Ewing, and that the mistake of the ^{Said} M.E.C.Ewing in said deed be corrected; that partition of said ^{land} be made in accordance with the rights of the parties; and if mistaken in their special prayer, or any part thereof, then they pray ~~for~~ full general relief.

And they will ever pray &c.

C. T. Duncan, Atty.

C. W. Ewing et al.
vs. { Bill du Chy.
M. E. C. Ewing et al

1900, 1st October rules bill
filed sums accepted &
Decree nisi.

" 2nd October rules & M
Confirmed & Cause set for
hearing

C. H. Ewing et al,
^{vs}
M. E. C. Ewing et al,

Hon H. A. W. Skenn, Judge of the
Circuit Court of Lee Co. Va.
The answer of Emma Lucile Ewing
and Raymond R. Ewing, infants
under the age of twenty-one years,
by J. O. Woodward their guardian ad
litem, assigned to defend them
in this suit, to a bill of complaint
exhibited against them and others,
in the Circuit Court for the County
of Lee, by C. H. and F. B. Ewing.

The respondents reserving to
themselves the benefit of all
just exceptions to the said bill, for
answer thereto or to so much thereof
as they are advised that it is material
they should answer, by their said
guardian ad litem, answers and
says:—

That they are infants of tender
years and, and by reason of their
infancy are incapable of under-
standing or of taking care of their
rights and interests. They therefore
by their said guardian commend
themselves and their rights and
interests to the protection of the

court, and pray that our decree may be pronounced which will tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray, etc.

J. C. Woodward guardian
ad litem for Emma Lucile Ewing
and Raymond R. Ewing.

Virginia Lu County Court.

This day personally appeared before me, A. B. Munsey clerk of the Circuit Court for the county aforesaid, J. C. Woodward guardian ad litem for Emma Lucile Ewing and Raymond R. Ewing whose answer is above written and made oath, that the statements contained in the said answer, so far as made of his own knowledge, are true;

and so far as made from
the knowledge & information
derived from others, he believes
to be true

Given under my hand this
the 8th day of Nov. 1900

A.B. Munsey Clerk

L. W. Erving
vs } In Chancery

M. E. L. Erving et al.

Answer of
J. O. Woodford,
Guardian ad litem

Filed November 8th
1900.

A. B. Munsey clk

To the Honorable T.A.W.Skeen, Judge of the Circuit

Court of Lee County, Virginia:

The separate answer Mary E.C.Ewing to a bill exhibited against her and others in this honorable Court by C.W.Ewing and F.C.Ewing.

Respondent says that it is true that her husband Joseph H.Ewing lately departed this life in this county; that before his death he owned a very valuable tract of land situated in said County some five miles west of Jonesville and on the Cumberland Gap road. Before his death the said Joseph H.Ewing had parted with valuable parts of his said real estate in which your respondent had joined, thus relinquishing her right of dower in the same. It is further true that the said Joseph H.Ewing, was for a number of years, before his death, in very feeble health, and one of his great desires in the latter part of his life was to make provision for your respondent, his wife, and his three youngest children, the elder one having theretofore been considerably advanced, established in business and fully able to care for himself. It is further true that a short time before the death of the said ~~###~~ Joseph H.Ewing, he conveyed to your respondent all of the lands then owned by him, situated in this county. The main purpose of this deed was to make provision for your respondent and her children. He was likewise indebted to her and desired to compensate her for her dower interest in the lands which he had theretofore sold and conveyed, and at the time of said conveyance to her by her husband it was understood between them that she would convey said land to their three youngest children, reserving to herself a reasonable life estate therein, thus providing for herself and said children. To carry out her part of said agreement, respondent had a deed prepared conveying said land to said children, reserving a life estate therein to herself of one-third part of said land. After said deed was written she inserted in said deed after the name of C.W.Ewing, which name came last of the three grantees named, the word children, intending thereby to designate the three grantees as her children, but in fact making it read as she is now informed, the way in which the word children is used, C.W.Ewing's children, instead of her own children. Respondent is now advised that this deed in legal effect, if left standing as it is would give

to each of C.W.Ewing's children, now living or which may be born to him, in twenty one years and ten months from the date of said deed and equal interest with each one of her children, to-wit, the said F.C. and MaryS. Ewing and give nothing to her son C.W.Ewing. Such a thing never was intended by her, and the said deed is a mistake, injurious to her children and was never intended by her. It is likewise of little benefit if allowed to stand to the children of C.W.Ewing, there being two of them now and others likely to be born without means and said land in their hands charged with an indebtedness of the debts still due to A.W.Couk and others amounting to some \$400.00 or \$500.00, which the said Joseph H.Ewing owed at the time of his death and at the time of his conveyance to respondent, and the amount of which was unknown to her at the time she conveyed, or attempted to convey to her children, and in order to cover which she put into said deed as consideration of \$1000.00. Said children never could pay said sum of money or their part thereof and a sale of their interest in said land, if said deed is allowed to stand, would be inevitable.

Your respondent admits the mistake in the said deed; she is willing that the same be corrected, and is willing to do all in her power to aid in the correction of the same. She is willing that said land should be partitioned, in fact she avers that it is to the interest of all that it should be partitioned, as in that way each would take charge of his or her respective share and could more easily make arrangements for the payment of his or her respective share of said indebtedness, and to this end she joins with the plaintiff in their prayer for partition.

And now having answered said bill as fully as she is advised that it is material to answer the same, she prays to be hence dismissed with her costs.

Mary E. Ewing

W. K. Hopkins p.d.

L. M. Ewing et al.
vs } on Chancery

M. E. L. Ewing et al

Answer of M. E.
L. Ewing,

C. W. Ewing et al

vs.

Mary E. Ewing et al

All matters and things in this suit
having been settled by former decrees entered
in the cause, it is stricken from the docket

to Mr. Zwingi it also
75 1/2 Science journal
M. Z. to Zwingi it also

Entered this volume
for new series
Sept 18th 1905
Entered in C. O. B. 8
page, 62.

C.W.Ewing et al.-----Plaintiffs

Vs.

In chancery.

M.E.C.Ewing et al.-----Defendants

This cause came on this day to be heard upon the bill of the complainants and exhibits therewith; the answer of the infant defendants Erma Lucile, and Raymond E.Ewing by J.O.Woodward, their guardian ad litem, filed on the 8th day of November, 1900; and the answer of M.E.C. Ewing filed at this term of the Court; general replication to each of said answers; and was argued by counsel. On consideration of all of ~~the~~ which the Court is of opinion that the grantor M.E.C.Ewing made a mistake in the execution of the deed dated on the 12th day of September, 1898 in so far as said conveyance is to the children of C.W.Ewing, instead of the said C.W.Ewing himself, the Court being of opinion that it was the intention of the said M.E.C.Ewing to convey said lands to Mary S.Ewing, F.C.Ewing and C.W.Ewing; It is therefore adjudged, ordered and decreed that said deed be and the same is hereby corrected and reformed so as to vest the title in said lands subject to the life estate of the said M.E.C.Ewing reserved by her to the extent of one-third in rental value, in the said Mary S.Ewing, F.C.Ewing and C.W.Ewing in equal interests or portions; and it is further adjudged ordered and decreed that the said Mary E.C.Ewing duly make, execute and deliver to said Mary S.Ewing, F.C.Ewing and C.W.Ewing another deed conveying said land in accordance with this decree, and the Clerk of this Court will deliver to said grantees a copy of this decree, properly certified and attested by him, to be recorded in the proper Deed Book of this County as a muniment of title to the grantees under said deed and this decree. And the Court being of opinion that said land is susceptible of partition in kind and that the parties are entitled to a partition of said land, it is therefore adjudged, ordered and decreed that C.C.Elliott, Elkanah Flanary and C.M.Graham, who are appointed Commissioners for the purpose, do go upon said lands and to lay off and assign to M.E.C.Ewing one equal third part in rental value of said land to have and to hold by her during the term of her natural life; and that they then lay off and assign to Mary S.Ewing, F.C.Ewing and C.W.Ewing, each an equal third of said entire tract of land. Said Commissioners will if practicable make the dower bear equally upon each

of said shares of land, so that no other partition will be necessary after a termination of said life estate. In making said partition and assignement of dower, said commissioners will have due regard to water wood, ways and quality of the land. They will report their action to a future term of this Court. And this cause is continued.

Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 10th day of August, 1906. This decree was presented, and admitted to record.

Teste: H. C. T. Curing, Clerk.

By M. E. Hawley, D.C.

C. W. Ewing et al.
vs. { Deane.

W. E. C. Ewing et al

En. C. B. No. 1. P. 340
+ 341.

Recorded in Deed
Book 44 page 381K
Examined Aug. 10, 1906
Indexed

Enter this deed
12 new sheet
March 15th 1901

clerk 75[¢] Paid.

Attest, 1906. This deed was presented, and admitted to record.
In the Clerk's office of New County, on the 10th day of
August, 1906, at 10 o'clock, P.M.

Clerk: _____

This deed made this 12th day of September 1898 by and between M.E.C.Ewing, of Lee county Virginia, of the first part, and Mary S. Ewing and F.C.Ewing, of Lee County, Virginia, and C.W.Ewing's children, of Lexington, Ky, parties of the second part, Witnesseth that for and in consideration of the sum of One thousand dollars (\$1000.00) and the natural love and affection which the party of the first part bears to her children, the said parties of the second part, the said party of the first part hereby bargains, sells and conveys unto the parties of the second part with a reservation of the life estate reserved in the deed of June 20th from J.H.Ewing to said party of the first part and with a reservation of a life estate to said party of the first part of one third of the land hereby conveyed, all of the following tract or parcel of land situated lying and being on the main road five miles west of Jonesville and on which the party of the first part now resides it being all in the lands formerly owned by J.H.Ewing and fully described in deeds to the said J.H.Ewing from the Wm.Ewing heirs, Harvey Horton and others and in the petition of division of the William Ewing estate all of which are on record reference to which is hereby made for a more particular description except so much of said land as has heretofore been conveyed to W.E.R.Ewing on the 24 day of Sept. 1889 and to A.C.McNiel and others by deed bearing date on the 7th day of Nov. 1892 and on the day of October 15, 1897, and by deed from M.E.C. and J.H.Ewing to F.R.Stickley by deed dated the 12th day of Sept. 1898 which said lands are bounded by the lands of Thos.S.Ely, A.C.McNiel, D.D.Wheeler, Frank Spangler, Z.S.Gibson and others, and containing acres more or less. To have and to hold said tract or parcel of land together with all the appurtenances thereunto belonging unto the said parties of the second part forever. And the said party of the first part hereby covenants that she will

warrant generally the title to the property hereby conveyed.

Witness the following signature and seal the day and year first above written.

M.E.C.Ewing (Seal.)

Virginia, Lee county, to wit:

I, M.G.Ely, a Notary Public in and for said county and state aforesaid, do certify that M.E.C.Ewing personally appeared before me in my county and state aforesaid and acknowledged the above deed bearing date on the 12th day of Sept. 1898.

M.G.Ely, N.P.

Virginia, Lee county, to wit:

In the office of the clerk of the county court of said county, the 16th day of May, 1899, this deed was presented and together with the certificate thereto annexed, admitted to record.

Teste: S.V.F.Richmond, Clerk

By M.D.Richmond, D.C.

A copy, Teste: B.M.Morgan Clerk

M. E. L. Ewing

Lo } Deed.

Mary S. Ewing

D.B. No 35 - p. 421.

"Exhibit No. 4"

Cher for copy 50 cts

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *M. E. Ewing, Mary S Ewing, Erna Lucile Ewing, & Raymond R. Ewing*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the *1st* Monday in *October 1900* ~~189~~, to answer a bill in chancery exhibited against *them* in our said court by *C. M. Ewing and F. L. Ewing*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *26th* day of *September 1900* ~~189~~, and in the 12 *5th* year of the Commonwealth.

A. B. Munsey Clerk

C. M. & F. L. Ewing
us. { SUBPOENA
IN CHANCERY

M. E. & Ewing et als

p. q.

To *1st October* Rules.

Circuit Court.

We accept legal service
of the within writ. This
the 24 day of Sept. 1900

M. E. & Ewing
Mary S. Ewing.